

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MITSUI SUMITOMO INSURANCE CO.,
LTD. and TOKIO MARINE & NICHIDO
FIRE INSURANCE CO., LTD.

Plaintiffs,

v.

THE VESSEL HYUNDAI KINGDOM, its
hull, engines, tackle, apparel, and furnishings,
in rem,

Defendant.

IN ADMIRALTY

Case No.: _____

VERIFIED COMPLAINT IN REM FOR
SECURITY ARISING FROM CLAIM OF
MARITIME LIEN FOR CARGO LOSS
AND DAMAGE

Plaintiffs, upon information and belief, allege as follows:

1. This is an admiralty proceeding in accord with Rule 9 (h) and Supplementary Rule C of the Federal Rules of Civil Procedure, within the jurisdiction of this court.
2. At all material times, plaintiffs Mitsui Sumitomo Insurance Co., Ltd. and Tokio Marine & Nichido Fire Insurance Co., Ltd. have been insurance companies, organized under the laws of Japan.
3. The vessel HYUNDAI KINGDOM is an oceangoing container ship which regularly trades between Asia and the West Coast of North America, including Seattle,

VERIFIED COMPLAINT IN REM FOR SECURITY ARISING
FROM CLAIM OF MARITIME LIEN FOR CARGO LOSS AND
DAMAGE - 1

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1 Washington. The vessel is expected to return to Seattle, Washington, or elsewhere in Puget
2 Sound, within the near future.

3 4. On November 8, 2009 the vessel HYUNDAI KINGDOM arrived in Tacoma,
4 Washington, having suffered an incident while crossing the Pacific Ocean from Asia in which
5 containers were lost overboard and other containers were in damaged condition. 25 of the
6 overboard containers and a number of the damaged containers held goods consigned to
7 Nintendo of America, Inc.

8 5. Plaintiffs Mitsui and Tokio insured the lost and damaged cargo for Nintendo
9 and as a result of the referenced incident aboard the HYUNDAI KINGDOM, plaintiffs paid a
10 total of \$12,828,209.39 to Nintendo pursuant to the contract of cargo insurance. By virtue of
11 their payments for cargo loss and damage, said plaintiffs have become subrogated to the rights
12 of Nintendo.

13 6. Plaintiffs Mitsui and Tokio, subrogated to the rights of Nintendo, allege that
14 the loss of and damage to the Nintendo cargo was caused by errors or omissions of the vessel
15 HYUNDAI KINGDOM and its crew in failing to provide a seaworthy vessel and to undertake
16 the vessel's obligations to care for cargo containers appropriately, including the failure to
17 secure containers properly and to plan for weather expected in a trans-Pacific voyage during
18 November; accordingly plaintiffs are entitled to a valid maritime lien against the vessel
19 HYUNDAI KINGDOM, *in rem*, in accord with maritime law, in the amount of
20 \$12,828,209.39 plus prejudgment interest and costs.

21 7. Nintendo's cargo aboard the vessel HYUNDAI KINGDOM was carried in
22 accord with the terms and conditions of a Service Agreement between Nintendo and MOL
23 (America), Inc. and bills of lading for carriage aboard the vessel HYUNDAI KINGDOM.
24 Nintendo's contractual agreement with MOL (America), Inc. provides that any litigation
25 arising from cargo loss and damage is to proceed in District Court in Tokyo, Japan.

1 8. Plaintiffs Mitsui and Tokio, subrogated to the rights of Nintendo, have
2 commenced litigation in the Tokyo District Court to recover for the loss as described above,
3 naming as defendants Mitsui O.S.K. Lines, Ltd. (the contractual carrier), Hyundai Merchant
4 Marine Co., Ltd. (the time charterer of the vessel), DS KINGDOM (Liberia) Shipping
5 Limited (the bareboat charterer), and DS-Rendite-Fonds Nr. 115 DS KINGDOM GmbH &
6 Co. Containerschiff KG (the vessel owner).

7 9. In accord with the United States Court of Appeals for the Ninth Circuit case of
8 *Mazda Motors of America, Inc. v. COUGAR ACE*, 565 F.3d 573, 2009 AMC 1220 (2009), the
9 plaintiffs' claim against the vessel *in rem* for cargo loss and damage is likewise subject to the
10 jurisdiction provisions of the contract between Nintendo and MOL which provide for
11 litigation in District Court in Tokyo, Japan.

12 WHEREFORE, plaintiff prays as follows:

13 1. For an order of arrest of the defendant vessel HYUNDAI KINGDOM, its hull,
14 engines, tackle, apparel, and furnishings, *in rem*, upon the vessel's arrival in this district
15 pursuant to Supplemental Admiralty Rule C of the Federal Rules of Civil Procedure;

16 2. For an order that the defendant vessel HYUNDAI KINGDOM be held until it
17 can be sold at auction in order to provide security for plaintiffs claims presently proceeding in
18 Tokyo, Japan or; alternatively, that the owner of the defendant vessel HYUNDAI KINGDOM
19 provide adequate and appropriate security in lieu of the vessel itself for the vessel's liability in
20 the proceeding in Tokyo, Japan;

21 3. For an award of costs to plaintiffs; and

22 4. For such other and further relief as this court may deem just and appropriate in
23 the circumstances.

24 //
25 //
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1
2 DATED this 5th day of November, 2010.

3 COZEN O'CONNOR

4
5 By: /s/ Rodney Q. Fonda
6 Rodney Q. Fonda, WSBA No. 6594
7 COZEN O'CONNOR
8 1201 Third Avenue, Suite 5200
9 Seattle, Washington 98101
10 Telephone: 206.340.1000
11 Toll Free Phone: 800.423.1950
12 Facsimile: 206.621.8783

13 Attorneys for Plaintiffs

14
15 **VERIFICATION**

16 I, RODNEY Q. FONDA, declare and state under penalty of perjury that the foregoing
17 is true and correct.

18 Executed at Seattle, Washington on November 5, 2010.

19
20 /s/ Rodney Q. Fonda
21 Rodney Q. Fonda
22
23
24
25

VERIFIED COMPLAINT IN REM FOR SECURITY ARISING
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DAMAGE - 4

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2010, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system.

DATED this 5th day of November, 2010.

COZEN O'CONNOR

By: /s/ Bonnie L. Enera
Bonnie L. Enera, Legal Assistant
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VERIFIED COMPLAINT IN REM FOR SECURITY ARISING
FROM CLAIM OF MARITIME LIEN FOR CARGO LOSS AND
DAMAGE - 5

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